

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 970 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SUNDERLAL AVATRAI KHUBANI

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Appearance:

MR MG NAGARKAR for appellants

No one is present on behalf of Respondent No. 1

DELETED for Respondent No. 2

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CORAM : MR.JUSTICE M.R.CALLA and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/04/99

#### ORAL JUDGEMENT

This Appeal is directed against the Award passed by the Motor Accidents Claims Tribunal (M), Nadiad in Motor Accident Claim Petition No.210/81 on 4.2.87 whereby the Tribunal has awarded a sum of Rs.51,875/- with running interest at 6% per annum from the date of the application till the full realisation together with proportionate cost thereof.

In the accident in question the claimant Sunderlal Avatrai Khubani was found to have sustained injuries in his legs resulting into loss of gait, loss of mobility at right knee joint, muscles of right knee joint had power of Grade 5 minus dorsi flexion at right ankle joint and power of great 0, there was average loss of 13.33 kg. in weight and bearing capacity of right lower limb with body weight of 72 Kg and squatting and cross-legged sitting was not possible at all. X-ray examination on right leg showed mal-united fracture of tibia and loss of middle segment of fibula. On these findings, the witness Dr.S.R. Kahatri Ex.63 came to the conclusion that the victim had sustained a permanent partial physical impairment assessed at 56 percent of right lower limb. The victim had remained in the Hospital at Nadiad as an indoor patient wherefrom he was transferred to Civil Hospital, Ahmedabad and then shifted to Lucknow where he remained in the Hospital for a period of nearly 6 months and he had undergone operations for about 3 to 4 times. The victim has sustained serious injuries and has suffered agony of the pain and the expenses for his treatment etc.

The Motor Accident Claims Tribunal has noticed that the accident had taken place on 26.10.80 when the claimant was returning to Nadiad from Kheda on scooter driven by him at 5.15 P.M. When he was near Dharmasinh Park one passenger bus bearing Registration No.GTE 4341 came at an excessive speed from the opposite side. While negotiating the turn the passenger bus was driven rashly and in a negligent manner and it dashed against the scooter on right side while the claimant was going at a moderate speed on the correct side. On consideration of the evidence and material before the Tribunal, it came to the conclusion that the claimant had sustained injuries, as aforesaid, as a result of rash and negligent driving by S.T.bus No.GTE 4341. The Tribunal has considered in detail the claims made item wise at paras 13 to 19 of the order and on consideration of the material and evidence has awarded compensation as under:-

Rs.1050/- as expenses of the attendant for 35 days  
calculated at the rate of Rs.30/- per  
day.

Rs. 700/- in the name of money value of the  
services rendered by two attendants for  
35 days.

Rs.1425/- in the name of costs of medical

treatment.

Rs.2500/- as expenses of medical treatment.

Rs.15000/- for pain, shock and suffering and loss of amenities and enjoyment of life.

Rs.6000/- against loss of income for 12 months calculated at the rate of Rs.500/- per month.

Rs.25200/- in the name of loss of earning capacity consequent upon the permanent disability sustained by him on the basis of the fact that the claimant was earning Rs.500/- per month by his toil and supervision.

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Rs.51875/- in all.

The learned Tribunal has considered that the percentage of permanent disability, so far right lower limb is concerned, was 28% with reference to the body as a whole. On that basis he has taken 28% of Rs.500/- i.e. Rs.140/per month, which comes to Rs.1680/- for one year. Whereas the claimant was nearly 45 years of age at the time of the accident, multiplier of 15 has been applied to the figure of Rs.1680/- so as to award Rs.25,200/-

Thus a total sum of Rs.51,875/- has been awarded.

We have heard learned counsel for the appellant. The learned counsel for the appellant has not been able to point out any error in the adjudication of the claim at any of the aspects and we find that looking to the facts and circumstances of the case and the injuries, which were sustained by the claimant, the amount of compensation awarded against each of the items cannot be said to be on a higher side, rather it is on the lower side. In this view of the matter, we do not find any reason to take a view different than the one which has been taken by the learned Tribunal and we do not find any infirmity in the Award. There is no force in this Appeal and the same is hereby dismissed. No order as to costs.